

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23,600

MARY SULLIVAN

Appellant

v.

JOHN W. GLENN INC.

Appellee

United States Court of Appeals
for the District of Columbia Circuit

FILED JUL 31 1970

Nathan J. Paulson
CLERK

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

APPELLANT'S PETITION FOR REHEARING

b During the argument of this case the court asked counsel for appellant if appellant's brief contained any reference to a review of the docket sheets of cases in which rule 13 of the local civil rules was involved, which review he mentioned before the court. The appellant's brief contained no information of this nature and this petition for re-hearing is filed to furnish the court with the result of this review and shows the extent of the practice of dismissing cases under rule 13 without notices warning of dismissal first being sent; and the illegality of such practice.

A review of the docket sheets for the next 22 cases where rule 13 was applicable and filed in the same docket book in the office of the Clerk of the U.S. District Court for the District of Columbia with those for the instant case (Vol. 4-1966) shows that two cases were dismissed without a warning notice being issued, while docket sheets for twenty cases contained the notation, "First notice under rule 13."

The two cases that were dismissed without a warning notice being issued as in the instant case were: C.A. 836-66 Moyer vs. Ace Wrecking & Building Material Co. and C. A. 818-66 Moyer-v Constantine vs. Schwartzback & Sandler.

The twenty cases in which the docket entry "First Notice under Rule 13" was made were as follows:

Civil Action No.

504-66 John W. Spear Jr. vs. Sidney Robert Lee
510-66 Dennis Collins v. James A. Tatum
516-66 Baylor v. Washington Gas Light Co.
556-66 Fogu & Suls v. Cole
558-66 Steele v. Corson & Gruman Co.
560-66 Union Trust Co. vs. Charles Hoffert et al
582-66 John R. McNair et al vs. Atlas Credit Corp et al
604-66 Geneva B. Jackson vs. Foggie
610-66 Estelle B. Marks vs. Radin
612-66 Henrietta Sahn vs. Hotel Management Corporation
618-66 Earl L. Brown vs. E.E. Weaver
936-66 Gray Capital Properties Inc. vs. Maude Boldon
934-66 Johnnie D. Jackson vs. David R. Loyupone
932-66 Kenner vs. Stowell
928-66 Fernandez vs. Kapnistos
892-66 Herbert vs. Lassiter
882-66 Ehelps vs Woods
874-66 White vs. Arkin
844-66 Brewer vs. Klavin
838-66 Moyer vs. National Wrecking Co.
~~836-66 Moyer vs. Ace Wrecking & Building Materials Co.~~
~~818-66 Constantine vs. Schwartzback & Sandler~~

It will be seen that in this group of cases, two cases out of twenty-two or an average of one out of eleven was dismissed without compliance with the following requirements of rule 13 that a warning notice be given in advance of dismissal under rule 13. Rule 13 provides, in part: "One month prior to the termination of the 6 month period the clerk shall warn the delinquent party by mail that his claim will stand dismissed if he fails to comply with this rule, making an entry in the docket of the mailing".

The practise of dismissing a case under rule 13 without first issuing

a warning notice in some cases and issuing warning notices before dismissal in other cases in the same status is contrary to "due process" because rule 13 should be applied to all litigants alike.

"Due process of law" is secured if the laws operate on all alike. *Duncan v State of Missouri*, 14 S. Ct. 5, 152 U.S. 377, 382; 38 L. ed 485. *Florida Cent. & PR Co. vs. Reynolds*, 22 S. Ct. 176, 179; 183 U.S. 47; 46 L. ed 283.

"Due process" is secured by laws operating on all alike and not subjecting the individual to the arbitrary exercise of the powers of government, unrestrained by the established principles of private rights and distributive justice. *State vs. Hodgson*, 66 Vt. 134; 28 A. 1039, 1094; *State vs. Stimpson*, 62 A. 14, 17; 78 Vt. 124; 1 LRA NS 1163.

It is the position of appellant that the rights that appellant acquired under Rule 13 (a) of the local civil rules of court became his property and were not effected by paragraph (b) of rule 13 because that would amount to taking his property (the rights received by appellant by paragraph (a) of rule 13) without "due process of law".

WHEREFORE the court is asked to grant this motion for re-hearing, and reverse the decision of the lower court and remand this case with directions to reinstate it on the ready calendar.

Respectfully submitted,

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I certify that a copy of the foregoing Petition for Rehearing was served upon Donald J. Caulfield, attorney for appellees, 3906 Rhode Island Ave., Brentwood, Maryland, postage prepaid this 31st day of July, 1970.

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